IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

MFA.No. 843 of 2001()

WCC.283/1996 of W.C.C.,KOZHIKODE
.....

APPELLANT/APPLICANT:

P.K.ABDUL RAZAK,S/O.ABOOBACKER HAJI,
PANNIKKATTUKANDI HOUSE, P.O.UNNIKULAM, KOZHIKODE.

BY ADV. SRI.M.P.MOHAMMED ASLAM

RESPONDENTS/OPPOSITE PARTIES:

1.A.P.ABDUL LATHEEF, S/O.MOIDEEN HAJI,P.O.UNNIKULAM
KANDAPURAM POONUR, KOZHIKODE DIST.

2.M/S.NATIONAL INSURANCE CO. LTD., DIVISIONAL OFFICE,
P.B.NO.40, BANK ROAD, KANNUR-1.

BY ADV. SRI.P.JAYASANKAR FOR R2

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.843 OF 2001 (A)

Dated this the 23rd day of October, 2007

J U D G M E N T

KOSHY,J.

The appellant suffered personal injuries in an accident arising out of and in the course of employment. He filed application under Section 22 of the Workmen's Compensation Act for compensation before the Commissioner of Workmen's Compensation. He was the driver of the vehicle owned by the 1st opposite party and insured by the 2nd opposite party. According to the applicant, he was getting Rs.2,500/- as the monthly income. But the accident occurred on 7.4.1996. As per the provisions of the Workmen's Compensation Act as existing at the time of accident, the maximum income that can be taken into account is Rs.2,000/-. So tribunal has taken only Rs.2,000/- as the monthly income. We see no fault in the same. The doctor examined the patient and certified that 30% permanent professional disability. Professional disability

means loss of earning capacity. The certificate reads as follows:

> “This is to certify that Mr.Razak, 29 years, Pannikkathu Kandi House, Unnikulam P.O., Kozhikode was admitted at Medical College Hospital, Kozhikode after a road traffic accident on 7.4.1996 (IP.No.20541).
>
> At the time of admission he had the following injuries:
>
> 1. Grade I compound fracture both bones (R) leg.
> 2. Grade I compound fracture fibula (L)
> 3. Fracture pelvis.
>
> He was treated with wound debridement, antibiotics, the fractures were reduced and bilateral long leg slab given. Long leg slabs were converted into long leg cast on 14.4.1996. He was discharged from the hospital on 17.4.1996, and thereafter he was treated as an outpatient later he received treatment from District Co-operative Hospital, Kozhikode.
>
> Today I have examined Mr.Razak for his disability evaluation. He is having the following disabilities.
>
> 1. Anterior angulation of (R) leg 100
> 2. Medical bowing of 100 (R) leg
> 3. Multiple scar's on the (R) and long leg
> 4. Tenderness at fracture site.
> 5. Pain (R) knee, (R) ankle
> 6. Shortening of 1.5 cm in (R) leg.
> 7. Pain at back
> 8. Numbness on the (R) leg
> 9. Weakness of lateral toes (R) side.

10. Numbness in the plantar aspect of (R) foot.

He is a driver by profession. His permanent professional disability assessed as 30% (Thirty percent).

Under Section 4(1)(ii) of the Act, Commissioner cannot be arbitrarily assessed the compensation but should assess the compensation on the basis of the assessment of loss of earning capacity by a qualified Medical Practitioner. Here the Assistant Professor, Orthopaedics certified that for loss of earning capacity, in other words, professional disability is 30%. Therefore Commissioner was bound to accept the compensation for 30% disability. But Commissioner did not accept the above certificate and only granted compensation for 13% loss of earning capacity. Since the medical certificate shows that there is 30% loss of earning capacity, compensation payable will be Rs.2,000 x $^{60}/_{100}$ x $^{30}/_{100}$ x 211.79 =Rs.76,244.4. Commissioner granted only Rs.33,039.24 with interest. Therefore additional amount of compensation payable is Rs.43,205.16. The above amount should be deposited by the 2nd respondent Insurance company with 12% interest from the

date of application till its deposit over and above the amount awarded by the Commissioner. With the above observations this appeal is partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.843 OF 2001 (A)

J U D G M E N T

23rd October, 2007